



In re Estate of John Kipsang Maritim (Deceased) (Succession Cause 138 of 2000) [2023] KEHC 514 (KLR) (31 January 2023) (Ruling)

Neutral citation: [2023] KEHC 514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 138 OF 2000
TM MATHEKA, J
JANUARY 31, 2023**

IN THE MATTER OF THE ESTATE OF JOHN KIPSANG MARITIM (DECEASED)

BETWEEN

SELINA CHEPTERER MARITIM APPLICANT

AND

GRACE MARITIM RESPONDENT

RULING

1. There are two applications before court for determination. One is by the Respondent Grace Maritim and it is dated February 17, 2022 while the other one is by Selina C Maritim, Applicant herein, dated April 19, 2022.
2. The first Application is brought under order 50 Rule 6, Order 51 Rule 1, order 22 rule 22 of the Civil Procedure Rules, Section 1B & 3 A of the *Civil Procedure Act* and Section 93 of the Law of Succession Act and Rule 49 of the *Probate and Administration Rules*. It seeks for the following orders:
 1. Spent.
 2. That pending the hearing and determination of this Application there be an order of Stay of Execution of the Ruling delivered by Hon Lady Justice Matheka on the December 16, 2021 since it is unattainable.
 3. That pending the hearing and determination of this Application this Honourable Court be pleased to order that the erected fence be removed from the parcels of land since it is causing great inconvenience on current occupants and the Applicant herein.
 4. That this Honourable Court be pleased to stay execution of the ruling delivered by Hon Justice Matheka on December 16, 2021 pending the hearing and determination of the Applicant's Appeal in Nakuru High Court Succession Appeal No1 of 2020 dated the February 24, 2020.



5. That this Honourable Court be pleased to order the OCS Kaptembwo Police Station to oversee the removal of the fence that was erected on each parcel of land illegally by the respondent herein.
 6. That this Application be heard inter-parties on such date and time as this Honourable Court may direct.
 7. That this Honourable Court be pleased to issue any other orders as it may deem just, appropriate and expedient in the interest of justice.
 8. That the costs of this Application be provided for.
3. The Application is premised on the grounds that the ruling delivered on December 16, 2021 by this court on the mode of distribution of the estate of the deceased is unattainable since the properties no longer form part of the estate; that the Applicant having been dissatisfied with the ruling by Hon. Makau on distribution as per the Application filed by the respondent & allowed by Justice Matheka on the list of Properties and mode of distribution, filed an appeal at the High Court being Nakuru High Court Succession Appeal No 1 of 2022 that was never dispensed with; that the ruling is on how the properties in the estate of the deceased are to be distributed and which properties no longer form part of the estate and the applicant is apprehensive that the said ruling is irrational and the same is overtaken by events; that the respondent has gone ahead and illegally erected fences on the properties that are no longer part of the estate of the deceased and the same is causing a great inconvenience on the owners of the parcels who have ownership documents; that the actions of the respondent are an abuse of the court process since she is not an administrator to the estate of the deceased and also a great injustice to the applicant since her matrimonial home has a fence erected on; that if the said stay of execution is not granted, the applicant's appeal will be rendered nugatory and the applicant will suffer irreparable loss since the respondent has erected fences on the properties including her matrimonial home and; that the respondent is using the said ruling as a way of intimidating the respondent since she is aware that the parcels of land no longer form part of the estate of the deceased; that she cannot deal with the parcels in any other way since they have owners who have title documents and that no prejudice shall be suffered by the respondent if the orders sought are granted.
4. The applicant in her supporting affidavit of the same date deponed that the court of appeal ordered that she maintains her matrimonial Home Rhonda Plot No 29/941 while the respondent retains her matrimonial home Kapsoit Plot No61 and below listed parcels be divided equally between her and the Respondent:-
- i. Miti Mingi Mbaruk 3/776
 - ii. Kapsoit Plot 61
 - iii. Kericho/Sosiot 528 (still in Regucheche's name)
 - iv. Balance at the Kenya Commercial Bank
 - v. Rhonda Plot No Nakuru/Municipality 29/10
 - vi. Rhonda Plot No Nakuru/Municipality Block 29/941.
5. She averred that her advocate filed a further affidavit dated February 6, 2019 stating clearly how the parcels of land stated above had been transferred to third parties.
6. That Hon. Makau later delivered a ruling on February 4, 2020 upholding the mode of distribution stated by the Court of Appeal and being aggrieved by the said ruling she lodged an appeal dated



- February 24, 2020 and an application dated February 28, 2020 seeking stay of execution of the said ruling pending determination of the Appeal but the same is yet to be determined.
7. She averred that the respondent subsequently successfully obtained court orders to have the police presence in order to effect the orders of Hon. Makau and the surveyor from Nakuru County and Kericho sub County to sub-divide the Land.
 8. She contended that the respondent went to the ground and with the help of the police and a surveyor subdivided the parcels of land and erected fences on the same.
 9. That the third parties on the parcels of land are buyers who purchased the same for value and in good faith and they have ownership documents for the same.
 10. She stated that the actions of the respondent are an abuse of the court process meant to intimidate and harass her and the new owners of the land.
 11. She stated that this is the current position of all the parcels of land.
 1. Kapsoit Plot No61- Residential home of the Respondent
 2. Kericho/Sosiot 528- still under the name of her father in law and has an ongoing Succession Cause No73 of 2010 in Kericho.
 3. Kericho/Kipchimchim 2059 – it does not form part of the estate and the Court of Appeal did not pronounce itself on the same
 4. Miti Mingi/Mbaruk Block 3/776- she sold the same to Kiplangat Tonui who was issued with the title deed on 12th October, 2007 and he sold the parcel and all the new owners acquired title deeds.
 5. Miti Mingi/Mbaruk 3/2217 –the respondent is in occupation of the same.
 6. Rhonda Plot No 29/10 – The same was sold to Hannah Cherop Chumka in 2012, which decision was made by her sons since she held the property in their trust.
 7. Rhonda Plot No 29/941- her residential home
 8. Shares at KCB Bank –The Respondent took immediate possession of the same.
 12. She averred that it is clear from the above that there is no parcel of land that is in the deceased name and belongs to his estate as the same was legally transferred to third parties and they acquired title deeds of the same.
 13. She contended that the respondent had gone ahead and subdivided her matrimonial home contrary to the Court of Appeal decision that both of them retain their matrimonial homes.
 14. She deponed that the actions of the respondent are illegal and this Honorable court should order that the said fence be brought down pending the determination of this application.
 15. She stated that the respondent's intention is to frustrate her and her children and deny the new owners the right to enjoy quiet possession of the parcels of land.
 16. She confirmed that the above parcels of land were transferred before the Court of Appeal rendered its decision and stated that if this Application is not allowed the third parties will be highly prejudiced.
 17. The Respondent opposed the Application via her Replying Affidavit sworn on March 22, 2022. She relied on her affidavits sworn on March 16, 2020 & on March 11, 2020.



18. She averred that this is a matter which has been in court since 2000 to date and has ended up before the Court of appeal and is only before the High Court for enforcement of the Court of Appeal directions in Civil Appeal No 274 of 2013.
19. She averred that this application is verbatim the applicant's application dated February 28, 2020 to which this court delivered a ruling. That the ruling of Hon. Makau issued on February 4, 2020 was issued in her administrative capacity as a deputy registrar of the high court and was on direction of Justice Hon. Ndung'u as can be gleaned from paragraph 1 of the Ruling and not in her capacity as a resident magistrate.
20. That since this matter has been proceeding before the High Court, the only available avenue of appeal to the applicant is to the Court of Appeal and hence the appeal No1 of 2020 is a non-starter and only meant to derail this matter longer.
21. She contended that the ruling of Hon. Makau is verbatim the Court of Appeals judgment and it is not clear what the applicant wants stayed or appealed against.
22. She stated that averment by the Applicant on the current status of the parcel of land is a clear admission of the applicant's action of intermeddling with the estate as the matter was pending before court when the purported sales and transfers were done.
23. It was her deposition that the parties affected by aforesaid execution of the court orders should have been the ones filing the protests and not the applicant herein.
24. That the applicant transferred properties Nakuru Municipality 29/10 Rhonda and Miti Mingi Mbaruk Block 3/776 to her children and close relatives whilst this matter was pending in a bid to evade subdivision of the property and this explains why the application emanates from the applicant herein instead of protests by parties affected by the subdivision of the property of the estate as would be expected.
25. She deponed that Land Parcel Nakuru Municipality 29/10 (Rhonda) was held to form part of the estate despite its transfer to the respondent at page 17 of the Court of Appeal judgment and should be divided equally among both parties.
26. She stated that the the respondent's claims that the land is no longer in existence is false and meant to mislead this honorable court and that the applicant has clearly intermeddled with the estate causing its disposal and changing hands whilst the court proceedings were on going and should thus be cited for contempt of court
27. She averred that this application has been overtaken by events as she is at an advanced stage of executing the orders of this court issued on January 13, 2022.
28. She believes litigation must come to an end and urged this court to stop the applicant's habit of wasting this courts precious judicial time.

Submissions

29. Only the Applicant filed her submissions to this application. She filed the same on June 20, 2022.
30. It was her submissions that she sold the land in question to third parties in her capacity as an administrator in order to get finances to continue taking care of her children and has never interfered with peaceful occupation of the Respondent in her parcels of Land.



31. She submitted that the mode of Distribution proposed by the court is contrary to section 40 of the Law of Succession as there is no regard to the number of children each house had. That distribution of the estate under section 40 of the Act is majorly based on equity and not equality. In support of this position she relied on the case of *In Re Estate of Michael George Tendwa Said Deceased* [2020] eKLR.

Analysis & Determination

32. The only issue that arise for determination is whether the orders sought are merited.
33. The Record shows that the Court of Appeal in its ruling dated October 18, 2017 found that the deceased's estate comprised of the following: -
1. Miti Mingi Mbaruk Block 3/776
 2. Miti Mingi Mbaruk Block 3/2217
 3. Kapsoit Plot 61
 4. Kericho/Sosiot 528 Still Registered In Regucheche's Name
 5. Balance At Kenya Commercial Bank Kericho
 6. Nakuru Municipality Block 29/10 Rhonda
 7. Nakuru Block 941 Rhonda
34. The court further directed that the above properties be distributed equally between the parties herein to hold in trust for themselves and their respective children in equal Shares in accordance with Section 40 of the Law of Succession Act and that distribution should ensure that each of the party herein need not vacate their matrimonial houses.
35. It is indeed true that this matter is before this court for enforcement of the Court of Appeal directions in Civil Appeal No 274 of 2013. The Deputy Registrar issued a Ruling regarding enforcement of the said court of Appeal orders on February 4, 2020. That Ruling is verbatim the findings of the Court of Appeal which the Applicant has preferred an Appeal against vide Memorandum of Appeal No 1 of 2020 dated the February 24, 2020.
36. Subsequently, this court on December 16, 2021 following an Application by the respondent directed that the OCS, Kaptembwo Police Station , the OCS Kericho Police Station , OCS Kapsoit Police Station and OCS Sosiot Police Station do supervise and provide security during subdivision of the land parcels Miti Mingi/Mbaruk Block x/xxxx and Miti Mingi/Mbaruk Block x/xxxx – OCS Kaptembwo Police Station ; Rhonda Plot No Nakuru/Municipality xx/xxx and land parcel Rhonda Plot No Nakuru/Municipality xx/xx, OCS Kaptembwo Police Station ; Kericho/Kipchimchim 2059 – OCS Kericho Police Station ; Kericho/Sosiot 528 – OCS Sosiot Police Station ; Kapsoit Plot No 61 – OCS Kapsoit Police Station and the Applicant herein to bear the costs of surveyors, auctioneers and eviction expenses.
37. This court held as follows: -
- “It is noteworthy that the Respondent never filed any appeal against the judgment of the Court of Appeal. So, that is the binding judgment on both parties. The moment the Court of Appeal determined what assets constitute the estate of the deceased, and how it was to be distributed, that effectively set aside any transactions that may have taken place prior to that judgment....”



To that extent the effect of the application is simply to effect the Court of Appeal judgment ... It is for that reason that I allow the same as prayed”

38. The applicant is now seeking to stay the above orders pending the hearing and determination of Appeal No 1 of 2020. The test for applications for stay of execution in the High Court is set out in Order 42 Rule 6 of the Civil Procedure Rules. The conditions that an Applicant has to meet and/or demonstrate for the court to grant a stay of execution are as follows: -
- a. substantial loss will result to applicant if stay is not granted; and
 - b. security is given by the Applicant for the due performance of any decree as may eventually become binding on the appellant upon determination of the appeal; and
 - c. the application has been brought without unreasonable delay.
39. There are a plethora of decided cases on the issue of grant of Stay of Execution pending Appeal. See Civil Appeal No107 of 2015, *Masisi Mwita v Damaris Wanjiku Njeri* (2016) eKLR, where the Court held that:-
- “The application must meet a criteria set out in precedents and the criteria is best captured in the case of *Halal & Another v Thornton & Turpin Ltd*, where the Court of Appeal (Gicheru JA, Chesoni and Cockar Ag JA) held that: -
- “The High Court’s discretion to order stay of execution of its Order or Decree is fettered by three conditions, namely; - Sufficient Cause, substantial loss would ensue from a refusal to grant stay, the Applicant must furnish security, the application must be made without unreasonable delay.
- In addition, the Applicant must demonstrate that the intended Appeal will be rendered nugatory if stay is not granted as was held in *Hassan Guyo Wakalo v Straman Ltd* (2013) as follows: -
- “In addition the Applicant must prove that if the orders sought are not granted and his Appeal eventually succeeds, then the same shall have been rendered nugatory.”
40. The court also must be satisfied that there is an arguable appeal before granting stay of execution. In the case of *Benedict Ojou Juma & 10 Others v A.J. Pereira & Sons Ltd* [2016] eKLR, the Court held;
- “24. The applicant must first satisfy the court that appeal or intended Appeal is not frivolous, that is to say, that it has an arguable Appeal.
30.The draft Memorandum of Appeal serves to establish if there is an arguable Appeal. The applicant has the right of Appeal. In order to stay execution pending the exercise of that right however, the court seized of the judgment must be satisfied the principles laid down in the case of *Rosebell Wambui Muthee* are all satisfied. It must be satisfied there is an arguable Appeal...”
41. Arguable Appeal-This court has a duty to verify that any intended Appeals are not frivolous. An arguable appeal is not one which must necessarily succeed (see the case of *Cooperative Bank of Kenya Ltd v Banking Insurance of Finance Union (Kenya)* [2015] eKLR.
42. The applicant here intends to appeal against the Ruling of the Deputy Registrar on enforcement orders issued pursuant to the aforesaid Court of Appeal decision delivered on October 18, 2020. It is imperative to note that the Applicant has not applied to set aside, review nor appealed against the



- Court of Appeal decision. The same therefore stands and is binding on the parties and this court and therefore the intended appeal against the ruling of the deputy Registrar is in my view, in view of the Court of Appeal decision, a non-starter.
43. Substantial loss - The Applicant must demonstrate that she is likely to suffer substantial loss should stay not be granted. The applicant is bound by a Court of Appeal decision which stands intact. It would appear that the set of facts that support the applicant's complaint regarding alleged substantial loss were of her own making. In any event there is no complaint from the alleged new owners. That besides she cannot use those sets of facts to claim substantial loss.
 44. Security for due performance of decree - The Applicant has not indicated her willingness to offer security for the due performance of the decree.
 45. Delay - The Ruling of this court was delivered on December 16, 2021. The Application was filed in February 2022 there was no undue delay on the part of the Applicant.
 46. The upshot is that the Applicant has not presented an arguable appeal which could form the basis for a stay of execution and failed to fulfill all the conditions for grant of the same. Therefore, the Prayer for stay of execution pending Appeal is not merited.
 47. Having said the foregoing renders prayers No 3 and 5, untenable.
 48. The Application is without merit and is dismissed with costs to the Respondent.
 49. The Second Application is brought under Section 1A,1B,3A & 63(e) of the *Civil Procedure Act*, Cap 2 Laws of Kenya, Order 40 Rule (3) and 51 Rule 1 of the *Civil Procedure Rules 2010* and Section 5 of the *Judicature Act* seeking for the following orders:
 - I. Spent
 - II. That this Honourable Court be pleased to order the arrest and detention in Civil Jail of Grace C. Maritim the Respondent herein for a period of six (6) months or such period as the Honourable Court may deem necessary.
 - III. That costs of the Application be provided for.
 50. The application is based on the grounds that this Honourable Court pronounced itself vide a Ruling delivered on January 13, 2022 which specifically directed the Surveyor Kericho County and Nakuru County respectively to subdivide the Estate of the deceased i.e. Land Parcel No Kapsoit Plot No61, Land Parcel Kericho/Sosiot 528, Land Parcel Kericho/Kipchimchim 2059, Miti Mingi/Mbaruk Block 3/776; Miti Mingi/Mbaruk Block 3/2217, Rhonda Plot No Nakuru/Municipality 29/941 and Rhonda Plot No Nakuru/Municipality 29/10 equally between the Respondent and the Applicant. However, the Respondent has refused to co-operate and after subdivision using hired goons destroyed the fences placed by the Surveyors and ploughed the area meant to be for the Applicant despite being aware of the said order.
 51. That the Respondent is keen to frustrate the Applicant's efforts to take occupation of the property and it is in the interest of justice and for the purpose of upholding the dignity and honor of this Honourable Court that the orders sought are granted.
 52. The Application is supported by an Affidavit of Selina Chepterer Maritim. She deponed that on February 23, 2022 in company of the Police Officers from Sosiot Police Station and the Surveyor Kericho County they proceeded to Land Parcel Kericho/Sosiot 528 and fenced off her portion measuring 2.5acres and on 16th again in company of the police officers from Kaptembwo Police Station



and Surveyor Nakuru County they proceeded to plots nos. Miti Mingi/Mbaruk Block 3/776, Miti Mimgi/Mbaruk Block 3/2217, Rhonda Plot No Nakuru/Municipality 29/941 & Rhonda Plot No Nakuru/Municipality 29/10 surveyed the land thereafter fenced off her portion.

53. She averred that sometimes on 22nd March, 2022 she visited her portion of land parcel No Miti Mingi/Mbaruk Block 3/776 and found that the Respondent had trespassed and ploughed it. Upon enquiry she was informed that the Respondent's son one Dennis Kiprono Sang was the one who ploughed the same.
54. She contended that later on March 25, 2022 in company of her workers they proceeded to plough and Plant on Plot No Kericho/Sosiot 528 and while still there the respondent and her family approached them and started destroying the fertilizers, uprooting the crops and destroying the fence.
55. She stated that the respondent's son further destroyed the fence in her plots No Rhonda Plot No Nakuru/Municipality 29/941 & Rhonda Plot No Nakuru/Municipality 29/10 and when he was called by an officer from Kaptembwo Police Station he admitted to have caused the damage.
56. She deposed that the above respondent's acts are in contravention of this court order issued on January 13, 2022 which were duly served upon her and that if the respondent is not stopped by this court she will continue with her actions of disobedience to her detriment and deprive her the property as directed by the court.
57. She averred further that unless the respondent is punished for her defiance and breach of the court orders she will continue to disobey the orders of the Honourable Court thus lowering it's authority and dignity.
58. It was further her deposition that court orders should not be issued in vain.
59. The Respondents in response to the application through her Replying Affidavit sworn on May 30, 2022 claimed that the application is a non-starter, lacks merit and is only meant to taint her image before this Honourable Court.
60. She denied the entire averments by the Applicant and stated that the same is baseless and cannot hold water for want of proof.
61. She urged this Honourable Court to direct the Applicant to desist from filing such applications against her since the same is only meant to defame and paint her as a naïve, uncouth woman who does not know that it is mandatory to respect court orders.
62. She prayed that the application be dismissed with costs.

Issues for determination

63. The issues that arise for determination are: -
 1. Whether the Respondent is guilty of contempt of the court Order of January 13, 2017 and what Orders should this court make in the circumstances.

Analysis

64. This application was brought under the provisions of Sections 1A, 1B, 3A & 63(e) of the *Civil Procedure Act*, Cap 2 Laws of Kenya, Order 40 Rule (3) and 51 Rule 1 of the *Civil Procedure Rules 2010*. It is trite law that in proceedings under the Law of Succession Act, the provisions of the *Civil Procedure Act* and Civil Procedure Rules do not apply for the reason that the Law of Succession Act is sui generis with its own unique and special procedures which regulate probate proceedings. The only provisions of the



- Civil Procedure Rules which apply are provided for under Rule 63 of the Probate and Administration Rules. Otherwise in other instances the rules provided under the Law of Succession Act apply. (See [Josephine Wambui Wanyoike v Margaret Wanjiru Kamau & Another](#) [2013] eKLR.)
65. These provisions are basically Orders V, X, X1, XV, XV111, XXV, XL1V, and XL1X. In the current [Civil Procedure Rules 2010](#), these orders deal with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attendance of witnesses, affidavits, review and computation of time.
66. The application was therefore brought under rules which are not within what is allowed by Rule 63 of the Probate and Administration Rules. However, under Article 159 (2) (d) of the [Constitution](#) the court is obligated to dispense justice without undue regards to procedural technicalities. This court is further obligated by the provisions of Section 47 of the [Law of Succession Act](#) to entertain any application and determine any dispute under the [Law of Succession Act](#) and pronounce such decrees and make such orders therein as may be expedient. Under Rule 73 of the [Probate and Administration Rules](#) this court is empowered to invoke its inherent power and to make such orders as may be necessary for the ends of justice to meet.
67. In the applications, the applicant seeks for arrest and detention in Civil Jail of Grace C. Maritim the Respondent herein for a period of six (6) months or such period as the Honourable Court may deem necessary for being in contempt of orders issued by this court on 13.1.2022.
68. The Court of Appeal in [Abdi Satarbaji & Another v Omar Ahmed & Another](#) [2018] eKLR defined contempt in the following terms: -
- “Contempt of court is constituted by conduct that denotes willful defiance of or disrepute towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law; whether in civil or criminal proceedings.”
69. The court in emphasizing the need to obey court orders held as follows: -
- “It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”
70. Obedience of court orders is mandatory and it ensures that the integrity of the court is maintained. The Court of Appeal in [Fred Matiang'i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others](#) [2018] eKLR held that no court should take lightly allegations of contempt of court. That when courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed.
71. The Applicant contends that the respondent being aware of the orders of the court trespassed, ploughed, destroyed fences and uprooted the crops on the land parcels that were subject of the order and as such she was disrespectful and disobedient of the said court orders.
72. It is not in doubt that the Respondent was aware of the orders in issue. The applicant is required to establish that the Respondent has willfully disobeyed the said orders. When this is proved then the court can proceed to determine punishment to be meted upon the respondent.



73. In contempt proceedings it is trite law that proof must be made beyond the standard in civil cases as contempt is quasi-criminal. The burden of proof lies on the applicant. In the case of Gatbaria K. Mutikika v Baliamin Farm Ltd (1985) KLR 27, it was held as follows: -

“The courts take the view that where the liberty of the subject is, or might be involved in breach for which the alleged contemnor is cited must be precisely defined. A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved...it must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt.”

74. Therefore, the applicant must prove beyond peradventure that the respondent is guilty of contempt in that she willfully disobeyed the said orders. An order committing a person to prison for contempt is to be adopted only as a last resort and in the clearest of cases. (See the persuasive decision in Sutton Holdings Limited v Abdulabi Omar Said [2020] eKLR - CK Yano J).

75. This entire claim by the Applicant is denied.

76. The evidence given by the applicant is what is contained in her affidavit. First that on March 22, 2022 she was told that the respondent's son had ploughed the land. Evidently the respondent cannot be held responsible for the actions of another adult unless it is established that she did something to enable him commit the offence. Secondly that on the March 25, 2022 she went to plant but then the respondent and her family went and disrupted the same destroying their fertilizer, the crops and uprooting the fence. These were criminal acts if established that amount malicious damage to property. The applicant has all the rights to report the same to the police for investigations and necessary action. The applicant concedes that the respondent's son the same one who ploughed the land, admitted to police to having destroyed her fences. That again was a police matter but there is no evidence of any report; neither is there any evidence laid before the court to connect the respondent with the said destruction. The applicant remains at liberty to report these acts of destruction to the police for necessary action. Alternatively or at the same time provide sufficient evidence to demonstrate the respondent's willful disobedience of this court's orders. The photographs exhibited do not implicate the respondent either.

77. It is evident that the respondent is trying all she can to ensure that the estate is not distributed on the ground as evidenced by the application herein above. She ought to know it is a futile battle which she is bound to lose in the long term hence the earlier she accepts the outcome of the decision of the Court of Appeal the better for her and her family. These acts of lawlessness ought not to go unpunished and the respondent is at liberty to pursue them with the police. If cogent evidence of contempt of the orders of this court is placed before the court, the court will not hesitate to punish the contemnor.

78. That said, I find that this application has not established to the required standard that the applicant is in contempt. It is dismissed.

79. Each party to bear its own costs

DATED, SIGNED AND DELIVERED VIA EMAIL THIS 31ST DAY OF JANUARY, 2023.

MUMBUA T. MATHEKA

JUDGE

C/A Jeniffer

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